

### **REMARKS / ARGUMENTS**

The present application includes pending claims 1-29, all of which have been rejected. The Applicant respectfully submits that the claims define patentable subject matter.

Claims 1-29 stand rejected under 35 U.S.C. § 102(e) as being anticipated by USPP 2002/0104099 ("Novak"). The Applicant respectfully traverses these rejections at least for the reasons previously set forth during prosecution and at least based on the following remarks.

#### **I. EXAMINER'S RESPONSE TO ARGUMENTS**

The Examiner states the following at pages 2-3 of the Final Office Action:

Applicant's arguments filed 09/08/2009 have been fully considered but they are not persuasive.

(1) In response to applicant's argument (Remarks pgs. 14-16) that Novak (US 2002/0104099) discloses "two distinct roles for user within the media system," the examiner respectfully disagrees. As has been previously explained the upload source 122 and set top box 152 can be the same device ([0061]). The distinction between uploaders and users is for explanation purposes only and it is clear from Novak's complete disclosure that the two roles can be played by the same device, stb 152.

(2) In response to applicant's argument (Remarks pg. 16) that Novak does not disclose "receiving authentication information associated with a first user of the first communication device, and facilitating a display of a user-defined selection from the media content by the first communication device in a user-defined layout," the examiner respectfully disagrees. Novak requires a password to view the synthetic channel ([0084]) and the synthetic channel is arranged by the user ([0063]).

(3) In response to applicant's argument (Remarks pgs. 16-18) that Novak does not disclose "the software platform is operable to push the media content arranged in the user-defined layout, directly via the communication network to at least a second communication device associated with a second user at a second geographic location," the examiner respectfully disagrees. Novak teaches the upload device schedules broadcast of the synthetic channel which is received by other users ([0084]). The synthetic channel is sent from the upload device to the other users via intermediate devices as is inherent in a network. The claim limitation "directly via the communication network" must include intermediate devices receiving the personal media or there would be no "communication network."

In reference to Examiner's argument (1) above: Referring to paragraph 0061 and Fig. 5 of Novak, the Applicant points out that Novak does not disclose that the upload source 122 and the STB 156 at a end user location are one and the same entity. Novak, at paragraph 0061, only discloses that the upload source can use various ways to upload data, including a set-top box (such as the STB 152). *Novak never intended (nor is it possible) for "the upload source 122 and set top box 152" to be the same device simultaneously, and Novak's disclosure supports the notion that the upload source 122 cannot be simultaneously an end user.*

For example, the last sentence in paragraph 0061 states that once video recordings are uploaded to a server, they are "subsequently provided to subscribed end users." Obviously, the "subscribed end user" is not the same as the upload source. This is further supported by FIGS. 1-2 and 5. The web site (123, 224 or 506) and the video server (508) can be accessed only by the upload source and not by the end user

(clearly seen from one-way connection from the upload source 122/222 to the web site 124/224, as well as a one-way communication path from the camera 502 to STB 504 to web site 506 to server 508).

In reference to Examiner's argument (2) above: The Examiner alleges that "Novak requires a password to view the synthetic channel ([0084]) and the synthetic channel is arranged by the user ([0063])." The Applicant disagrees. As explained in the 09/08/2009 response, Novak (in paragraph 0084) requires a password *from the end user* to view the synthetic channel. In addition, Novak (at paragraph 0063) discloses that the synthetic channel can be arranged. However, such arrangement of the synthetic channel is performed by the uploader, and not by the end user (which are two separate entities as explained in the preceding paragraphs).

In reference to Examiner's argument (3) above: The Applicant points out that the key claim language here is "push the media content arranged in the user-defined layout, directly ... to at least a second communication device..." In other words, communication of the media content is achieved by *pushing the media from the first device directly to the second device, and without the use of any intermediate devices.* However, as conceded by the Examiner in the above citation (3), Novak teaches that "synthetic channel is sent from the upload device to the other users via intermediate devices..." In other words, by the Examiner's own admission, Novak does not disclose "push the media content arranged in the user-defined layout, directly via the communication network to at least a second communication device associated with a

second user at a second geographic location for consumption at the second geographic location," as recited by the Applicant in independent claim 1.

The Applicant respectfully maintains all arguments stated in the 09/08/2009 response, which are summarized again herein below, for the convenience of the Examiner.

## **REJECTION UNDER 35 U.S.C. § 102**

### **II. Novak Does Not Anticipate Claims 1-29**

The Applicant first turns to the rejection of claims 1-29 under 35 U.S.C. § 102(e) as being anticipated by Novak. With regard to the anticipation rejections under § 102, MPEP 2131 states that "[a] claim is anticipated only if **each and every element** as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." See Manual of Patent Examining Procedure (MPEP) at 2131 (internal citation omitted). Furthermore, "[t]he identical invention must be shown in as complete detail as is contained in the ... claim." See *id.* (internal citation omitted).

Without conceding that Novak qualifies as prior art under 35 U.S.C. § 102(e), the Applicant respectfully traverses this rejection as follows.

**A. Rejection of Independent Claims 1, 12, 16 and 27 under 35 U.S.C. § 102(e)**

With regard to the rejection of independent claim 1 under 35 U.S.C. § 102(e), the Applicant submits that Novak does not disclose or suggest at least the limitation of "push the media content arranged in the user-defined layout, directly via the communication network to at least a second communication device associated with a second user at a second geographic location for consumption at the second geographic location," as recited by the Applicant in independent claim 1.

The Final Office Action states the following:

Consider claim 1, Novak clearly teaches a system for supporting multiple users of a communication device (Fig. 1), comprising:

a first communication device communicatively coupled to a communication network at a first geographic location; (Fig. 3: STB 308 is coupled to the Internet 302, [0045].)

media content disposed in the communication network or the first communication device, (Media content can be stored in the STB, Fig. 1 [0032], or on the network, Fig. 3 [0047].), the media content comprising personal media; (The content is user created, [0062].)

a software platform residing on the first communication device ([0077]), the software platform receiving authentication information associated with a first user of the first communication device, (Fig. 11: Access to the synthetic channel can be password protected, [0084].) and facilitating a display of a user-defined selection from the media content by the first communication device (Fig. 11: Block 114, [0085]) in a user-defined layout (Fig. 7: The user defines the layout of the display, [0063].), wherein the software platform is operable to push the media content

arranged in the user-defined layout, directly via the communication network to at least a second communication device associated with a second user at a second geographic location for consumption at the second geographic location, (Fig. 7: The content is broadcast from the

upload device to the end user, [0064]-[0065].) and wherein the selection from the media content is defined by the first user ([0062]) and corresponds to the received authentication information. (Only authorized users can view the content, [0084])

See Final Office Action at pages 3-4. With regard to the software platform functionalities, the Final Office Action relies for support on FIGS. 7 and 11 of Novak. Initially, the Applicant points out that **Novak discloses two distinct roles for users within the media system of FIG. 1 – individuals who upload media (uploaders) and end users (e.g., users of STB 308 or 152).** For example, certain individuals (e.g., upload source 122) can upload media objects to a server and specify a manner in which the media objects are to be played as a media program to an end user. The media program can be provided to an end user via a synthetic channel, which can be tuned to or selected by the end user as if tuning to a conventional television broadcast channel. See Novak at Abstract and ¶ 0010. Novak, at FIGS. 5-7, discloses how an upload source can organize/schedule the synthetic channel. Novak, at FIG. 11, discloses how an end user receives/views the synthetic channel. In other words, the synthetic channel is set up by the uploader, or the upload source, and it is only viewed by the end user, where the upload source 122 is different from the viewer (end user) of the EPG 153. Steps 1104-1106 of FIG. 11 and the corresponding description in ¶ 0078 relate to the upload source 122, and not to the end-users (the Applicant notes the specific reference that uploaded media is broadcasted to the end users; See lines 10-11 of ¶ 0078). In this regard, the platform used by the upload source 122 in steps 1104-1106 is not used by the end user STB 308.

The Final Office Action is equating the password entered by the end user for protecting access to the synthetic channel (Novak at ¶ 0084) to Applicant's "authentication information associated with a user of the communication device," as recited in Applicant's claim 1. In other words, Novak's entered password is associated with the end user viewing the EPG 153. However, **the end user does not have any control over what media is included in the media channel as such functionality is reserved for the uploader, or the upload source 122. In this regard, Novak does not disclose "wherein the selection from the media content is defined by the first user"** (of the first communication device, i.e., the end user of STB 308 or 152), as recited in Applicant's claim 1.

Furthermore, the Applicant points out that the Final Office Action equates Novak's set-top box 308 (or 152) with Applicant's "communication device." However, **Novak does not disclose that the STB 152 has the functionality of pushing media content arranged in user-defined layout, directly via a communication network to a second communication device associated with a second user at a second geographic location for consumption at the second geographic location.** Figs. 4 and 5 of Novak disclose that the STB can be used to simply upload personal videos to a server. Novak's STB is not used to push media content that has been arranged in a user-defined layout to another user at another location. Furthermore, Novak's STB uploads the personal video at the server only for purposes of storing it. **Novak does not disclose or suggest that the uploaded personal video is also "consumed" at**

**the location of the server. On the contrary, the uploaded personal video information is subsequently communicated to yet another location for purposes of preparing the synthetic channel. Therefore, Novak also does not disclose or suggest "push the media content arranged in the user-defined layout, directly via the communication network to at least a second communication device associated with a second user at a second geographic location for consumption at the second geographic location," as recited in Applicant's claim 1.**

The Examiner states the following in the "Response to Arguments" section:

In response to applicant's argument (Remarks pgs. 14-17) that Novak (US 2002/0104099) does not teach the limitation of "push[ing] the media content arranged in the user-defined layout, directly via the communication network to at least a second communication device associated with a second user at a second geographic location," the examiner respectfully disagrees. Novak discloses the first user scheduling broadcast times for the content during which content will be sent to the second user ([0064]-[0065]).

See Final Office Action at page 2. The Examiner relies for support on paragraphs 0064-0065, which relate to Novak's Fig. 7 and organizing the synthetic channel by the uploader or the upload source 122. **As explained above, the uploaded personal video information is subsequently communicated to yet another location for purposes of preparing the synthetic channel (e.g., see paragraph 0068). The Examiner is also referred to Fig. 1, where it can be clearly seen that there is no direct connection between the upload source 122 and the STB 152 at the end-user location.** The Applicant, therefore, maintains that Novak does not disclose or suggest



"push the media content arranged in the user-defined layout, directly via the communication network to at least a second communication device associated with a second user at a second geographic location for consumption at the second geographic location," as recited in Applicant's claim 1.

Accordingly, independent claim 1 is not anticipated by Novak and is allowable. Independent claims 12, 16 and 27 are similar in many respects to the method disclosed in independent claim 1. Therefore, the Applicant submits that independent claims 12, 16 and 27 are also allowable over the reference cited in the Final Office Action at least for the reasons stated above with regard to claim 1.

**B. Rejection of Dependent Claims 2-11, 13-15, 17-26 and 28-29**

Based on at least the foregoing, the Applicant believes the rejection of independent claims 1, 12, 16 and 27 under 35 U.S.C. § 102(e) as being anticipated by Novak has been overcome and requests that the rejection be withdrawn. Additionally, claims 2-11, 13-15, 17-26 and 28-29 depend from independent claims 1, 12, 16 and 27, respectively, and are, consequently, also respectfully submitted to be allowable.

The Applicant also reserves the right to argue additional reasons beyond those set forth above to support the allowability of claims 2-11, 13-15, 17-26 and 28-29.

In general, the Final Office Action makes various statements regarding claims 1-29 and the cited references, which statements are now moot in light of the above. Thus, the Applicant will not address such statements at the present time. However, the Applicant expressly reserves the right to challenge such statements in the future should the need arise (e.g., if such statement should become relevant by appearing in a rejection of any current or future claim).

**CONCLUSION**

Based on at least the foregoing, the Applicant believes that all claims 1-29 are in condition for allowance. If the Examiner disagrees, the Applicant respectfully requests a telephone interview, and requests that the Examiner telephone the undersigned Attorney at (312) 775-8176.

The Commissioner is hereby authorized to charge any additional fees or credit any overpayment to the deposit account of McAndrews, Held & Malloy, Ltd., Account No. 13-0017.

A Notice of Allowability is courteously solicited.

Respectfully submitted,

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/Ognyan I. Beremski/  
Ognyan I. Beremski, Esq.  
Registration No. 51,458  
Attorney for Applicant

McANDREWS, HELD & MALLOY, LTD.  
500 WEST MADISON STREET, 34TH FLOOR  
CHICAGO, ILLINOIS 60661  
(312) 775-8000

/ OIB